

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5684 of 2013
Date of Decision: November 4th, 2015

Rajnish Singh

...Petitioner

Versus

M/s A & A Chemicals and Glue Works (Pvt. Ltd.) Village Muradpur, Tehsil
and District Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vijay Sharma, Advocate,
for the petitioner.

Mr.Sanjiv Gupta, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 22.7.2013 (Annexure P-1), whereby the application filed by petitioner-defendant No.1 for striking out of the amendment caused by the respondent-plaintiff in pursuance to the order dated 8.5.2013 passed by the trial Court, has been dismissed.

Mr.Vijay Sharma, learned counsel appearing on behalf of petitioner-defendant No.1 submits that in pursuance to the receipt of the summons of the suit for injunction filed on 6.2.2012, defendant No.1 disclosed that the property had already been sold to M/s HR Equipment Pvt.Ltd. vide sale deed dated 7.3.2012. It is in these circumstances, the

respondent-plaintiff moved the application under Order 1 Rule 10 of the Code of Civil Procedure (Annexure P-5). The said application was allowed by the trial Court vide order dated 8.5.2013. Without moving separate application for amendment of the plaint, respondent-plaintiff incorporated the relief of declaration in the headnote and the prayer clause and also added paragraphs 14 and 16 and applications (Annexures P-7 and P-8) were filed for striking out of the amended plaint and as well as the application seeking interim order. He further submits that even if the plaintiff had reserved the right to seek amendment, there has to be an independent and separate application and he cannot assume that while granting the prayer under Order 1 Rule 10 CPC vide order dated 8.5.2013, amendment of the plaint is also inherent. He has also referred to the amendment caused by this Court in High Court Rules and Orders, which prescribes that the application for amendment has to be in writing and shall state the specific amendments, which are sought to be made indicating the words or paragraph to be added, omitted or substituted to the original pleading and cites the judgment rendered by the Hon'ble Supreme Court in **Gurdial Singh Versus Raj Kumar Aneja, 2002(2) CivCC 1** to contend that the parties cannot be taken at surprise.

Mr.Sanjiv Gupta, learned counsel appearing on behalf of respondent-plaintiff submits that the plaintiff had no other option but to seek impleadment of defendant No.3 as defendant No.1 had sold the land during the pendency of the suit and accordingly, the trial Court, while allowing application under Order 1 Rule 10 CPC, also granted liberty to file the amended plaint. Accordingly, the amended plaint was filed and the order

dated 8.5.2013 attained finality and, therefore, the application at the behest of the petitioner-defendant was not maintainable. He further submits that the provisions of sub-rule (4) of Rule 10 of Order 1 CPC also envisage the amendment of the plaint in case the person added as defendant and relied upon the following judgments to contend that in such situation, the amendment of the plaint is inevitable.

- 1) **Smt.Kalawati wd/o Dai Chand Versus Dharam Singh,**
1993(3) R.R.R. 711;
- 2) **Pawan Gupta Versus Pritpal Singh Saluja,** 2007(144)
DLT 254;
- 3) **Surinder Singh Versus Nirmal Singh and others,** 2014
(4) Law Herald 3355; and
- 4) **Smt.Sukhbir Kaur widow of Shri Pritam Singh and**
another Versus Shri Kartar Singh son of late Shri Hira
Singh, and others, Civil Revision No.862 of 2003, decided on
25.7.2012.

I have heard the learned counsel for the parties and appraised the paper book.

Though the sale deed dated 7.3.2012 was effected during the pendency of the suit, it would be hit by doctrine of *lis pendence*, but in order to avoid the technical objections, the respondent-plaintiff moved the application for impleading the subsequent vendee as defendant No.3. The impleadment of the subsequent vendee has been deliberated upon by the Hon'ble Supreme Court in **Thomson Press (India) Ltd. Versus Nanak Builders & Investors P.Ltd. and others,** 2013 (2) R.C.R. (Civil) 875.

Be that as it may, it would be apt to reproduce the order dated 8.5.2013, whereby the application (Annexure P-5) seeking impleadment of defendant No.3 by reserving the right to seek amendment of the plaint has been allowed. The order reads thus:-

“Heard on the application filed by learned counsel for the plaintiff under Order 1 Rule 10 CPC for impleading M/s H.R. Equipment Pvt.Ltd., Badi Nadi Road, Near Truck Union Patiala, through its Directors Pardeep Singh and Jagtar Singh as defendant no.3, being necessary party in the present suit. Learned counsel for the plaintiff has contended that defendant no.1 filed written statement on 25.9.2012 before the Court and from this written statement, the plaintiff came to know that defendant no.1 during the pendency of this suit has sold the property in dispute to M/s H.R.Equipments Pvt.Ltd., Badi Nadi Road, Near Truck Union Patiala through its Directors Pardeep Singh and Jagtar Singh, vide sale deed dated 7.3.2012. “It is further contended that as such above said firm is necessary party to the suit is liable to be impleaded as defendant no.3 in this suit. The plaintiff reserves his right to file amended plaint when the above said application is decided by this Court. It will help this Court to reach at proper conclusion between the parties, if the said firm is impleaded as defendant no.3 in this suit and no prejudice shall be caused to either of the parties. It is further contended that sufficient grounds are made out to allow the present application and to implead the above said firm as defendant no.3, prayer for allowing the application, in the interest of justice is made.

On the other hand, learned counsel for the defendant no.1 has contended that plaintiff had every knowledge regarding the transfer of the suit property to M/s H.R. Equipment Pvt.Ltd. And after the purchase of the property the purchaser raised construction on the same. It is further

contended that M/s H.R.Equipments Pvt.Ltd., cannot be allowed to be added as defendant in this suit, nor the plaintiff has any right to file the amended plaint. The suit of the plaintiff is liable to be dismissed. It is further contended that there are no grounds made out for impleading the party in the suit, the plaintiff want to set up a new case. While denying the other averments of the application, prayer for dismissal of the same is made.

After hearing contentions of both sides, I am of the considered view that in order to decide the real controversy between the parties and for proper adjudication of the case, M/s H.R.Equipments Pvt.Ltd., Badi Nadi Road, Near Truck Union Patiala, through its Directors Pardeep Singh and Jagtar Singh being necessary party; in the present suit is allowed to be impleaded as defendant no.3, in the interest of justice, as the said amendment will not change the nature of the suit.

Accordingly, the application in hand is disposed off. Now, to come up on 8.7.2013 for filing of amended plaint.”

On perusal of the aforementioned order, it is evident that the trial Court granted liberty to the respondent-plaintiff to file the amended plaint by observing that the amendment will not change the nature of the suit. The impleadment of defendant No.3 in the absence of challenge to the sale deed would be inconsequential. Provisions of sub-rule (4) of Rule 10 of Order 1 CPC also prescribe that where a person is added as defendant, the amendment is inevitable. The same reads thus:-

*“1. **Who may be joined as plaintiffs.-** All persons may be joined in one suit as plaintiffs where-*
(a) and (b)

	xxx	xxx	xxx
<i>Rules 2 to 9</i>	xxx	xxx	xxx

Rule 10. Suit in name of wrong plaintiff.-

(1) to (3)

xxx

xxx

xxx

(4) Where defendant added, plaint to be amended.- *Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”*

No doubt, the proceedings against defendant No.3 shall begin from the date when he was impleaded keeping in view the provisions of Section 21 of the Indian Limitation Act, 1963, but the fact remains that defendant No.3 has been impleaded with promptitude.

In my view, once defendant No.1 had no title or interest in the property by virtue of the sale deed, aforementioned, it is defendant No.3 who would be stepping into the shoes and contest the case. Even otherwise, no harm or prejudice will be caused to the petitioner-defendant and he will contest the suit by filing amended written statement. The rules and the procedure are handmade of justice and their strict implementation should not come into the way where the party should seek a relief on the basis of equity. The trial Court, while declining the application, also observed on the same lines. It would be apt to reproduce para 5 of the order dated 22.7.2013:-

“The learned counsel on behalf of applicants/defendants no.1 & 2 argued that the plaintiff cannot be allowed to amend the plaint without getting relief on application under order 6 rule 17 CPC. However they failed to convince this court as to why the court cannot allow the plaintiff to amend the plaint as a

relief of application under section 151 CPC as has been passed by the learned court of Ms.Deepika, ACJ (SD), Patiala vide order dated 08-05-13 in the present case. Moreover, procedure is handmade of justice. The applications should be read in substance and not in form. By not mentioning a provision of law in the head note of application should not let the applicant suffer if he deserves the relief under that application. Therefore the amendment made by the plaintiff in plaint pursuant to the order dt.08-05-2013 is valid and should not be allowed to be expunged.”

Gurdial Singh's case (supra) was a case where the manner, mode and procedure of the amendment has been explained. From the perusal of the amended plaint, respondent-plaintiff had only added paragraphs, headnote and the relief clause and aforementioned amendment is a consequential effect of the sale deed executed by defendant No.1 in favour of defendant No.3.

Keeping in view of the aforementioned facts and circumstances, in my view, there is no illegality and perversity in the order under challenge. The order cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition is dismissed.

November 04, 2015
ramesh

(AMIT RAWAL)
JUDGE